No. 03-51

Supreme Court, U.S.
FILED
AUG 7 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SEAN SILVEIRA, *et al.*,
Petitioners,

v.

BILL LOCKYER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

BRIEF OF DOCTORS FOR SENSIBLE GUN LAWS AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND REVERSAL

THOMAS C. SULLIVAN *
Eleven Penn Center
1835 Market Street, 28th Fl.
Philadelphia, PA 19103
(215) 569-08901

Counsel for Amicus Curiae
Doctors For Sensible Gun Laws

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

14 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF THE *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT FOR GRANTING CERTIORARI AND REVERSAL	3
I. INTRODUCTION	3
II. GUN CONTROL IS NOT CRIME CONTROL	5
III. FIREARMS ARE NOT A "MEDICAL ISSUE"	7
CONCLUSION	10

TABLE OF AUTHORITIES

OTHER AUTHORITES Page

Anderson & Dill, *Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life*, Journal of Personality and Social Psychology, Vol. 78, No. 4 (2001)..... 3

Cook, *et. al. Joint Statement on the Impact of Entertainment Violence on Children*, Congressional Public Health Summit, (July 26, 2000) .. 3

Anderson & Bushman, *Effects of Violent Video Games on Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, and Prosocial Behavior: A Meta-Analytic Review of the Scientific Literature*, Iowa State University, School of Psychology, American Psychological Society, Vol. 12, No. 5 3

http://www.cdc.gov/tobacco 9

http://www.cdc.gov/tobacco/sgr/sgr_forwomen/pdfs/ataglance.pdf 9

http://www.dhs.ca.gov/tobacco 9

Kleck & Gertz, *Armed Resistance to Crime: the Prevalence and Nature of Self-Defense with a Gun*. 86:143-186 Journal of Criminal Law & Criminology (1995)..... 7

Kleck *Point Blank: Guns and Violence in America*, (New York: Aldine de Gruyter, 1991) 6, 8

Lott, & Mustard, *Crime, Deterrence, and Right-to-Carry Concealed Handguns* Journal of Legal Studies. (1997) 5

Lott, *More Guns, Less Crime: Understanding Crime and Gun Control Laws*. Series: (SLE) Studies in Law and Economics (University of Chicago 1998) 5

TABLE OF AUTHORITIES—Continued

Page

Lott, *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control Is Wrong* (Regnery 2003)..... 5

McClurg, Kopel, & Denning *Gun Control & Gun Rights* (N.Y.U. eds. 2002)..... 5

Poe, *The Seven Myths of Gun Control* (Random House: Prima 2001) 5

Sugarmann & Rand, *Cease Fire—A Comprehensive Strategy To Reduce Violence*, Washington DC: Violence Policy Center. (1993)..... 6

Suter, *et al. Violence in America—Effective Solutions*. 84(6): 253-263 J. Med. Assoc. GA (June 1995)..... 5, 7

Waters, *Guns Save Lives* (WA: Loompanics.com 2002) 5

IN THE

Supreme Court of the United States

No, 03-51

SEAN SILVEIRA, *et al.*,
Petitioners,

v.

BILL LOCKYER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF DOCTORS FOR SENSIBLE GUN LAWS AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AND REVERSAL

INTERESTS OF THE *AMICUS CURIAE* [1]

Amicus Curiae Doctors for Sensible Gun Laws ("DSGL") is an organization of Ph.Ds, M.D.s, and other health care professionals who are concerned about the proliferation of ineffective and counterproductive gun laws. DSGL is an internet based (*http://www.dsgl.org*) network whose members have collectively spent thousands of hours researching the role of guns in American society. DSGL's mission is to educate fellow doctors and their patients, about gun laws that

[1] All parties in this appeal have graciously consented to the filing of this brief which supports the position of Petitioners. These consents have been filed with the Clerk of the Supreme Court.

are counterproductive and the deceitful tactics of those who advocate gun control. DSGL seeks to expose the distortions and propaganda tactics of those who advocate stricter gun control measures for personal and political expediency.

SUMMARY OF ARGUMENT

DSGL's intent is to warn the Court of fallacious arguments that may be advanced by other doctors who are members of the anti-gun lobby. For approximately the last two decades, a small number of politically motivated doctors have used their respected position in society to advance their personal political agenda with regard to the issue of Constitutional rights vs. gun control. They have put forth the position that gun violence should be studied and treated as a public health problem. They further hypothesize that guns actually cause violence and that they have a net negative impact on society.

It is important for the court to be aware that these anti-gun doctors do not speak for all doctors. It is even more important to understand the serious errors and deliberate distortions that have been built into virtually all of the anti-gun studies that have been conducted under the guise of medical research. These studies are perfect examples of what has come to be known as "junk science" or "results oriented research."

Many doctors and other scholars have spoken out against this perversion of medical science for political gain. In our opinion, the entire body of anti-gun medical research has been completely and resoundingly discredited. That is why Certiorari must be granted, before other constitutional rights are stripped based upon hysteria and junk science, such as what has taken place in the Ninth Circuit in *Silveira v. Lockyer*. A short review of this literature is important to the understanding of the role of doctors in the gun control debate.

ARGUMENT FOR GRANTING CERTIORARI AND REVERSAL

I. INTRODUCTION

From the founding of this nation, firearms in the hands of citizens, has overwhelmingly benefited society. Independence from the English crown was squarely secured by citizens possessing and using firearms and the necessity of ensuring the rights of American citizens to bear arms remains just as relevant today. The stability of civil society is promoted by citizens who are empowered to resist would-be tyrants usurping political power; or defending their lives and property, whether from foreign terrorist organizations or from the more mundane local criminal elements intent on committing grievous bodily harm, rape or murder in the advancement of their own personal goals.

The vast weight of the evidence shows firearms in the hands of law-abiding citizens actually reduces violence and crime thereby benefiting society with lives saved, injuries prevented, medical costs averted, and property protected. Amicus Curiae will demonstrate the blatant falsehood of repeated claims that "guns" harm society and are the cause of violence. Certainly, claimed "pathogens" of violence such as violent video games and Hollywood movies are protected by the First and Fourteenth Amendments.[2] Yet the Ninth Circuit,

---

[2] Paducah, Kentucky. Jonesboro, Arkansas. Littleton, Colorado. These three towns recently experienced similar multiple school shootings which have been linked to violent video games. Anderson, Craig A., Ph.D., Iowa State University of Science and Technology and Dill, Karen E., Ph.D., Lenoir-Rhyne College, *Video Games And Aggressive Thoughts, Feelings, And Behavior In The Laboratory And In Life*, Journal of Personality and Social Psychology, Vol. 78, No. 4 (2001); Anderson, Craig A. and Bushman, Brad J., *Effects Of Violent Video Games On Aggressive Behavior, Aggressive Cognition, Aggressive Affect, Physiological Arousal, And Prosocial Behavior: A Meta-Analytic Review Of The Scientific Literature*, Iowa State University, School of Psychology, American Psychological Society VOL. 12, NO. 5, (2001). According to

has abrogated an important constitutional right based upon personal policy preferences, politics, and hysteria without sufficient evidence supporting such an opinion.

Amicus Curiae provides this information for the sole purpose of showing the absence of any compelling governmental interest that would justify any law which involves forcible state confiscation, compulsory registration, or state-decreed monopolization and licensing of firearms. To the contrary, it is a compelling government interest to promote the health, welfare and safety of its citizens by protecting their lives and property from threats of harm by others. Further, it is academic that the government cannot protect all citizens and all property from all harm, all the time. As that burden ultimately falls unto each citizen, the health, welfare and

---

Dr. Anderson, "[v]iolent video games provide a forum for learning and practicing aggressive solutions to conflict situations." "In the short run, playing a violent video game appears to affect aggression by priming aggressive thoughts. Longer-term effects are likely to be longer lasting as well, as the player learns and practices new aggression-related scripts that can become more and more accessible for use when real-life conflict situations arise." In fact, a *Joint Statement On The Impact Of Entertainment Violence On Children*, Congressional Public Health Summit, (July 26, 2000), was signed by Donald E. Cook, MD, President, American Academy of Pediatrics; Clarice Kestenbaum, MD, President American Academy of Child & Adolescent Psychiatry; L. Michael Honaker, PhD., Deputy Chief Executive Officer, American Psychological Association; Dr. E. Ratcliffe Anderson, Jr. MD, Executive Vice President, American Medical Association; American Academy of Family Physicians; American Psychiatric Association. The Joint Statement to Congress read in part: "At this time, well over 1000 studies - including reports from the Surgeon General's office, the National Institute of Mental Health, and numerous studies conducted by leading figures within our medical and public health organizations - our own members - point overwhelmingly to a causal connection between media violence and aggressive behavior in some children. The conclusion of the public health community, based on over 30 years of research, is that viewing entertainment violence can lead to increases in aggressive attitudes, values and behavior, particularly in children." [Emphasis added]

safety of citizens is promoted by those citizens being able to legally protect and defend themselves from those who seek to impart unlawful harm. Accordingly, the right of citizens to bear and possess arms is a compelling governmental interest.

II. GUN CONTROL IS NOT CRIME CONTROL

To place the specifics of the current gun laws in perspective, the larger perspective of gun control must be examined. A study of 15 years' of data by University of Chicago researchers shows that "1,570 murders; 4,177 rapes; and over 60,000 aggravated assaults would have been avoided yearly" if states with restrictive laws would reform those laws to make it easier for mentally competent, law-abiding adults to carry concealed handguns for protection outside the home.[3]

The scholarly literature increasingly vindicates firearms as "pathogens" of violence, and it exposes gun control as a "placebo" or "suicide pill," rather than a "cure" for gun violence.[4] In fact, the strategy of repackaging gun control as a

---

[3] Lott, Jr., John and Mustard, D.B. *Crime, Deterrence, And Right-To-Carry Concealed Handguns.* Journal of Legal Studies. (January 1997); Lott, Jr., John *More Guns, Less Crime: Understanding Crime And Gun-Control Laws* Studies in Law and Economics (University of Chicago 1998).

[4] Suter EA, Waters WC, 4th, Murray GB, Hopkins CB, Asiaf J, Moore JB, Fackler M, Cowan DN, Eckenhoff RG, Singer TR, et al. *Violence In America—Effective Solutions,* 84(6):253-263 Journal Med. Assoc. GA. (1995); Lott, Jr., John *The Bias Against Guns: Why Almost Everything You've Heard About Gun Control Is Wrong* (Regnery 2003); McClurg, Kopel, & Denning, *GUN CONTROL & GUN RIGHTS* (N.Y.U.: eds. 2002), Poe, Richard, *The Seven Myths Of Gun Control* (Random House: Prima 2001), Waters, Robert A., *Guns Save Lives* (WA: Loompanics.com 2002); Lott, Jr., John R. *More Guns, Less Crime: Understanding Crime And Gun Control Laws.* Series: (SLE) Studies in Law and Economics (1998).

"public health" measure[5] resulted because of the near unanimous recognition within criminological scholarly literature, that gun control was a failure as crime or violence control.[6]

Stringent gun control does not, and cannot, keep firearms out of the hands of willful predators who ignore laws against drug trafficking, rape, and murder. Indeed, that is why they are called "criminals." Or, as the war in Iraq demonstrates, even an occupying force cannot disarm those that would ignore an edict to turn in all their firearms; a person or group of individuals that do not want to be disarmed, will not disarm. By analogy, stringent drug control laws have not eradicated drugs from the streets of America.

By whatever increment any firearm control measure inconveniences criminals, those criminals are not (the wishful and repeated claims of gun control advocates to the contrary notwithstanding) "prevented from obtaining guns." They are merely displaced into the fast and uncontrolled illegal gun market.

Gun control merely impedes gun purchases by law-abiding citizens, who ultimately become the predators' victims. Victim disarmament does not save lives; it costs lives. Quite simply, gun control is a counter-productive, even deadly, failure.

---

[5] Sugarmann J and Rand K., *Cease Fire—A Comprehensive Strategy To Reduce Violence*, Washington DC: Violence Policy Center (1993).

[6] This voluminous literature is best summarized in Kleck G., *Point Blank: Guns And Violence In America*, (New York: Aldine de Gruyter 1991)(Gary Kleck, Ph.D. is a Professor in the School of Criminology and Criminal Justice at Florida State University. His research centers on violence and crime control with special focus on gun control and crime deterrence. See also the scholarly work of John R. Lott, Jr., *supra*, the former Senior research scholar at Yale University School of Law1999-2001 and Law and Economics Fellow at the University of Chicago School of Law 1995-1999, and other prestigious posts.

III. FIREARMS ARE NOT A "MEDICAL ISSUE"

Whether measured in human or economic terms, peer-reviewed cost-benefit analysis establishes an overwhelming net benefit of guns in our society. Significantly more lives and money are saved using firearms, than are lost using them.[7] Without exception, all 14 studies of defensive firearm use suggest Americans use firearms defensively from 1 million to 2.5 million times annually.[8] The largest-scale, most comprehensive study of protective firearm use, Kleck & Gertz's National Self-Defense Survey, suggests about 2.5 million protective uses by adult Americans against human attackers each year. This means lives saved, injuries prevented, medical costs averted, and property protected. This also coincides with the government's interest of promoting the health, welfare and safety of its citizens.

About 400,000 of those who used firearms for self-defense believe they would have lost their lives had they not had a firearm for protection. Even if 90 percent of these firearm defenders were mistaken, the number of lives saved using firearms still outnumbers the lives taken using firearms by thousands. In some 98 percent of these defensive uses, the gun is not even fired. In only about 0.1 percent (one-in-a-thousand) of the protective uses is the attacker killed.[9]

The common misperception is that "Semi-automatic assault weapons are turning America's streets into war zones. True, ***they are not responsible for a large number of homicides***, but what they do is offer the possibility. . ." [emphasis added]

---

[7] Suter EA, et al., *Violence In America—Effective Solutions* 84(6):253-263 J. Med. Assoc. GA (June 1995).

[8] Kleck, G. and Gertz, M., *Armed Resistance To Crime: The Prevalence And Nature Of Self-Defense With A Gun* 86:143-186 Journal of Criminal Law & Criminology (1995).

[9] Suter EA, et al., *Violence In America—Effective Solutions*. 84(6):253-263 J. Med. Assoc. GA (June 1995).

Senator Dianne Feinstein: *Congressional Record*, November 9, 1993. The reality is that they are not involved in any statistically significant number of crimes.

Contrary to widespread claims, semi-automatic "military-style" weapons are rarely used by criminals in general or by drug dealers or juvenile gang members. In particular, they are almost never used to kill police officers, are generally less lethal than ordinary hunting rifles, and are not easily converted to fully automatic fire. They do offer a rate of fire somewhat higher than other gun types and can be used with magazines holding large numbers of cartridges, but there is absolutely no evidence demonstrating that so called "assault weapons" are relevant to the outcome of any significant number of gun crimes.[10] In fact, fewer than 2% of gun homicides involve the military-style semiautomatic weapons which are commonly labeled "assault weapons."[11]

As per the CDC's own statistics on firearm deaths: In 2000 within the United States, there were 16,386 homicides, of which 10,777 were caused by firearms—in fact, this number has remained consistent at about 10,000 per year for the last 20 years.[12] From a purely statistical standpoint, it is obvious that firearm deaths are not an escalating crisis as promoted by the anti-gun lobby.[13]

---

[10] Kleck, G., *Point Blank: Guns And Violence In America*. New York: Aldine de Gruyter. (1991).

[11] *Id.*

[12] See CDC's WISQARSTM (Web-based Injury Statistics Query and Reporting System), which is an interactive database system that provides customized reports of injury-related data.

[13] Secondhand smoke is the third leading cause of preventable death in this country, killing 53,000 nonsmokers in the U.S. each year. In the largest study ever conducted on the issue, Harvard Medical School found that a high exposure to secondhand smoke nearly doubles a woman's risk of having a heart attack. In sum, over 400,000 people die each year from the physiological effects of tobacco alone. California being the most with

It is undisputed that a crowd of people killed by a crazed gunman would grab the headlines of major news organizations, and thus energizing the calls for more gun control. The tragedy in Santa Monica, California in which a 1992 Buick plowed into a crowded farmers market killing 10 people and critically injuring 15, made headlines, but there was no demand for the elimination of motor vehicles from America's streets. Such an argument would be absurd in light of the overwhelming utility and benefit to society from the use of automobiles. Substitute the word Buick with "semi-automatic", and the societal utility and benefits of gun ownership is ignored. Yet, the reality is that far more people are killed by cars, tobacco, alcohol, and blunt objects than by guns. It is no counterargument that such guns are inherently dangerous instrumentalities because the very purpose of guns is to be dangerous, in particular to a transgressor threatening rape, bodily harm or death. The danger from a gun is what effectively reduces crime. The above evidence bears out that guns in the hands of citizens is a beneficial utility on a societal scale.

Amicus Curiae respectfully requests that the Petition For Writ Of Certiorari be accepted, and that further briefing be accorded to Amicus Curiae on this very important constitutional issue.

43,000 annually. According to the Surgeon General, "[I]n 1999, approximately 165,000 women died prematurely from smoking-related diseases, like cancer and heart disease. Women also face unique health effects from smoking such as problems related to pregnancy." A Report of the Surgeon General–2001, Women and Smoking *http://www.cdc.gov/tobacco/sgr/sgr_forwomen/pdfs/ataglance.pdf* California Department of Health Services, Tobacco Control Section. *http://www.dhs.ca.gov/tobacco; http://www.cdc.gov/tobacco* See CDC's WISQARSTM (Web-based Injury Statistics Query and Reporting System), which is an interactive database system that provides customized reports of injury-related data.

CONCLUSION

For the reasons set out, this Court should grant the petition for writ of certiorari, reverse the judgment of the US Court of Appeals in *Silveira* v. *Lockyer*, 312 F.3d 1052 (9th Cir. 2003), and remand.

Repectfully submitted,

THOMAS C. SULLIVAN *
Eleven Penn Center
1835 Market Street, 28th Fl.
Philadelphia, PA 19103
(215) 569-08901

Counsel for Amicus Curiae
Doctors For Sensible Gun Laws

* Counsel of Record